

ORIGINAL

PROB. 12B  
(7/93)

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

**United States District Court**

**for the**

SEP 19 2007  
at 10 o'clock and 45 min A.M.  
SUE BEITIA, CLERK

**DISTRICT OF HAWAII**

**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**

*(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: APRIL MONTALBO

Case Number: CR 01-00367DAE-01

Name of Sentencing Judicial Officer: The Honorable David Alan Ezra  
Chief U.S. District Judge

Date of Original Sentence: 9/9/2002

Original Offense: Count 1: Possession With Intent to Distribute and Distribution of Cocaine Base Within 1,000 Feet of a Public Playground, in violation of 21 U.S.C. § 860(a) and 18 U.S.C. § 2, a Class B felony

Original Sentence: Twenty-one (21) months imprisonment and six (6) years supervised release with the following special conditions: 1) Defendant shall participate in a substance abuse program throughout the first 4 years of supervised release, which may include drug testing at the discretion and direction of the Probation Office. If no violations are committed during this period, the discretion of the Probation Office, further treatment may be suspended; 2) That the defendant is prohibited from possessing any illegal or dangerous weapons; 3) Upon her release from imprisonment, the defendant shall reside for 3 months at the Po'ailani Dual Diagnosis Treatment Program as arranged by, and at the expense of, the Probation Office; 4) That the defendant participate in a mental health program at the discretion and direction of the Probation Office; and 5) Without the prior approval of the Probation Office, the defendant shall not enter the "Operation Weed and Seed" target area which is bordered by the Lunalilo Freeway, Nuuanu Avenue, Bethel Street, Nimitz Highway, North King Street, Dillingham Boulevard, and Kokea Street, as depicted in the map to be attached to the Judgment.

Type of Supervision: Supervised Release    Date Supervision to Commence: 2/18/2004

**PETITIONING THE COURT**

[✓] To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision.

**CAUSE**

The offender is not in violation of her conditions of supervised release. However, the offender was sentenced prior to U.S. v. Stephens, 9<sup>th</sup> Circuit 2005. Due to the ruling in Stephens, the probation officer is limited to three random tests outside of treatment. Given the established relationship between the offender's history of substance abuse and criminal activity, controlling strategies to detect substance abuse and prompt intervention is recommended in this case. Drug testing is the most reliable method for monitoring the offender's drug use. The purpose for the modification is so that the Probation Office could continue to conduct random drug testing at the rate of up to eight (8) tests per month. This amount will allow the probation officer to fashion random drug testing designed to detect drug use while not allowing the offender to predict test dates. To the offender's credit, she is motivated to remain drug-free and is willing to have the general condition modified to reflect the increase in drug testing.

Therefore, we respectfully recommend that the Court modify the offender's conditions of supervision and modify the general conditions as reflected above. The offender agrees to the modification of the conditions of supervised release. Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The offender waives her right to a hearing and to assistance of counsel. The U.S. Attorney's Office has been notified of the proposed modification and has no objections to the modification. However, it is noted that the offender's attorney, Shanlyn Park

Prob 12B  
(7/93)

3

objects to the proposed modification citing there is no cause or valid reason to continue to monitor the offender. Ms. Park was informed that the Court would be advised of her objection. It is noted that pursuant to 18 U.S.C. §3583(e)(2), the Court is authorized to modify the supervised release conditions at any time. It is our recommendation that the Court modify the aforementioned condition as agreed upon by the offender. Please indicate the Court action below.

Respectfully submitted by,

LISA K.T. JICHA  
U.S. Probation Officer

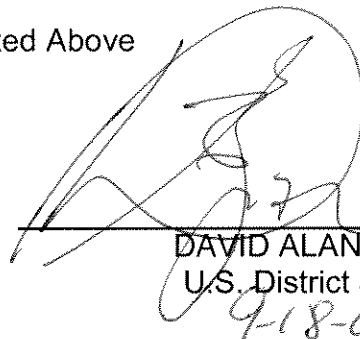
Approved by:

GENE DeMELLO, JR.  
Supervising U.S. Probation Officer

Date: 9/13/2007

## THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above  
☐ Other

DAVID ALAN EZRA  
U.S. District Judge

9-18-07

Date

PROB 49  
(5/96)

# United States District Court

## District of Hawaii

### Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

☒ To modify the conditions of supervision as follows:

**General Condition:** *That the defendant shall refrain from any unlawful use of a controlled substance. Shall submit to one drug test within 15 days of the commencement of supervision and at least two periodic drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision (mandatory condition).*

Witness: \_\_\_\_\_



LISA K.T. JICHA  
U.S. Probation Officer

Signed: \_\_\_\_\_



APRIL MONTALBO  
Supervised Releasee

8/10/07

\_\_\_\_\_  
Date